

B. L. M. J.



ILLINOIS POLLUTION CONTROL BOARD
August 20, 1981

RECEIVED

SEP 08 1981

ILL. E.P.A. - D.L.P.C.
STATE OF ILLINOIS

REYNOLDS METALS COMPANY,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)

PCB 79-81

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a petition and amended petition for variance filed April 9 and April 26, 1979 by Reynolds Metals Company (Reynolds) seeking a variance from Rules 303, 305(a) and 305(b) of Chapter 7: Solid Waste, in connection with operation of a landfill adjacent to Reynolds' McCook plant in Cook County. On May 31, 1979 the Illinois Environmental Protection Agency (Agency) recommended that the variance be denied or, in the alternative, be granted with conditions. Public hearings were held in Chicago on January 12 and April 23, 1981. No members of the public attended and the Board has received no public comment. At the second hearing the parties presented a stipulation of facts as well as an exhibit and testimony. The hearing consisted solely of testimony regarding two Agency recommended conditions which are contested by Reynolds. Reynolds has agreed to all other conditions.

The plant is situated at First Avenue and 47th Street in McCook. It employs about 2500 people and produces aluminum sheet, plate and other aluminum products. The landfill is in an old quarry covering approximately three and one-half acres, ranging in depth from eighty to eighty-five feet (Stip. 1). Part of the quarry has been completely filled, with an area of about 1½ acres remaining only partially filled (2:96)*. The completed area has been covered and graded, and a berm has been constructed to prevent entry of surface water into the active area.

*Because the transcripts are not numbered sequentially, references will indicate both volume and page number. Page fifty in volume two will be indicated thus: (2:50).

The pit was formed by mining silurian dolomite. The dolomite is fifty to 500 feet thick in the Chicago area. It is overlain by glacial till, through which it is recharged with water. It is porous and contains many₃ fissures. It exhibits an average permeability of 3×10^{-3} cm/sec and an average transmissibility of 25,000 gal/day/ft(sic). It is a major aquifer of the area (Ex. 1, p. 6, 8). Any leachate entering the dolomite has the potential to move large distances with little attenuation (2:29, 58).

At one time Reynolds utilized the quarry for disposal of a range of wastes. From 1970 through 1979 waste included construction waste, banding iron, fluxing tubes and sludge from the plant's wastewater treatment plant (2:44). It is not clear whether the sludge was from sanitary or process wastewater. Reynolds presented no evidence concerning the identity of materials deposited prior to 1970 (2:43). However, the Agency took samples of the sludge during 1979. Neutral extracts were analyzed. The aluminum content was found to be 55 ppm, but chromium, copper, iron, and lead were all 0.45 ppm or less. (Acid extracts ranged from 11 ppm for lead to 1500 ppm for iron.)

Currently Reynolds utilizes the quarry only for disposal of construction waste produced by modifications in the plant. At the time the petition was filed this was about fifty trucks per day, but by the time of the second hearing the amount had been reduced to five trucks per day. There are eight to twelve cubic yards per truck load (Pet. 2; Stip. 2; 2:7, 31).

Reynolds seeks a variance from Rules 303, 305(a) and 305(b). Rule 303 requires that refuse be deposited at the toe of the fill and that it be spread and compacted into cells not more than two feet thick. Rule 305(a) requires six inches of daily cover, and Rule 305(b) requires twelve inches of intermediate cover in all areas where no refuse will be deposited within sixty days. Reynolds does not comply with these operating requirements because it has no road down into the pit. Instead it merely pushes the refuse off the edge.

These operating requirements of Chapter 7 contemplate that waste should be spread and compacted into thin cells with a layer of material between cells which will prevent transmission of water. Sites are to be given a final cover of low permeability and to be graded to prevent infiltration of water.

The demolition waste dumped at this site has not been compacted or separated into cells with daily cover. In its loose state it likely contains many voids and is probably highly permeable. When final cover is applied there may be problems with subsidence due to these voids.

The first question the Board must reach is whether Reynolds must have a permit for this site. If a permit is required, then Rules 303 and 305 allow methods of operation and cover to be specified in the permit which differ from those normally imposed. That being the case, variance may be unnecessary.

The Board finds that a permit is required for this site. The language of Section 21(d) of the Environmental Protection Act (Act) which requires a permit for "refuse-collection or refuse-disposal operations, except for refuse generated by the operators own activities" has been limited by both the Board and the Third District Appellate Court.

In EPA v. City of Pontiac, PCB 74-396, 18 PCB 303 (August 7, 1975), the Board held that the exception "only exempts minor amounts of refuse which could be disposed of without environmental harm upon the site where it was generated." In R.E. Joos Excavating v. EPA, 58 Ill. App. 3d 309, 374 N.E. 2d 486 (March 31, 1978), the Court also found it necessary to limit this exception, stating:

Limiting the exception to refuse or material generated on site where it will be disposed of operates to prevent the objectives the Legislature envisioned in passing the Environmental Protection Act from being readily circumvented (374 N.E. 2d 489).

Generally, the type of debris disposed of here would fall under this more limited exception. However, the limited evidence presented as to the materials previously dumped at the site, the permeability of the site, the location of the site above the area aquifer, and the lack of cover combine to present a real potential for serious environmental harm. Certainly, the legislative intent is circumvented where a potential for serious environmental harm is allowed.

The Board finds that a 3½ acre quarry which is to be completely filled with refuse generated by the operator's own activities is not the type of activity which was envisioned by the legislature in enacting this exception. The amounts of refuse involved here are too great and the site too unsound to allow such a site to be exempted from the Agency oversight which is inherent in the Agency's permitting program.

A quarry, unless properly managed, is an extremely dangerous site for a landfill. In general, permeability is high, and this problem is compounded by the cracks and fissures. Any leachate production can be readily transmitted to the groundwater which necessitates greater diligence in oversight and control of such a site compared to a non-quarry landfill. In this particular case, leachate is presently being produced which could cause major pollution problems but for dewatering activities at an adjacent quarry owned by Material Services Corporation (Ex. 1, pp. 1, 15; 2:53). However, Reynolds has no control over this and the Board cannot determine how long these activities will continue (2:45). Only through the requirement of a permit can the Agency properly inspect and oversee operations to insure that the environment is protected.

The Board further finds the fact that the quarry is a leasehold to be inconsistent with the exception. The record discloses little about the relationship of the ownership of the quarry to the ownership of the remainder of the site. If the Board were to allow a site operator to dispose of refuse in a leasehold without a permit, many facilities could simply lease adjacent property for a short period of time, dump their refuse in this unpermitted site, and leave. This also would allow the objectives of the Act to be readily circumvented.

A landfill site has an extended life. Wastes cannot simply be covered and neglected. State and federal post-closure regulations are predicated upon the necessity of long-term oversight of such facilities. Someone must remain responsible for insuring that environmental problems do not arise in the future and must be liable for rectifying problems that do arise. A lessee does not generally have the necessary ongoing interest in the property to give this protection. A lessee need not be as seriously concerned with what he does to a leasehold as an owner must be of his property. Therefore, the Section 21(d) exemption should not be applicable to leaseholds.

The Board, therefore, dismisses the variance petition in this matter for failure to establish an arbitrary or unreasonable hardship in that the Agency may issue an acceptable permit to Reynolds upon proper application. If the Agency denies the permit or includes conditions which are unacceptable to Reynolds, that decision may be appealed to the Board.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Reynolds Metal Company's request for variance from Rules 303, 305(a) and 305(b) of Chapter 7: Solid Waste is hereby denied, and proceedings in PCB 79-81 are hereby dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20th day of August, 1981 by a vote of 5-0.


Christan L. Moffett, Clerk
Pollution Control Board